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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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### FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its February 8, 2011 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at [www.sdcountry.ca.gov/clerb](http://www.sdcountry.ca.gov/clerb).

#### CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

### CASES FOR SUMMARY HEARING (5)

#### ALLEGATIONS, FINDINGS & RATIONALE

##### 08-012

1. Death Investigation/Positional Restraint – Deputies extracted Jeffrey Dewall from a sobering cell and placed him into a Pro-strait chair where he became unresponsive and stopped breathing.

Board Finding: Not Sustained

Rationale: There was no complaint of misconduct in this case. The use of force in subduing and restraining the decedent, as reported, appears to comply with policy. However, the fist and knee strikes delivered to Dewall's head while constrained are disconcerting. Furthermore, the extraction team was unable to secure Dewall, citing their tactical gear as hindering their ability to remove flex cuffs while securing chair straps. Use of Restraining Equipment policy notes that "prolonged use of restraints that severely limit the motion of the inmate's extremities may cause unnecessary pain and or injury." Dewall was handcuffed behind his back, bent forward in a seated position with his head touching his knees, as an extraction team used body weight to hold him in place for several

minutes. The Medical Examiner confirmed that these actions were “purposeful and inherently dangerous,” because it severely compromised his ability to breathe resulting in asphyxiation. Several changes were made to Sheriff’s Equipment, Training, and Policies as a result of this incident. There was insufficient evidence to prove any culpability.

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### **10-003**

1. False Arrest – Deputy 1 arrested the complainant as she was stopped at a red light and speaking to Kaiser Hospital on a speaker phone.

Board Finding: Action Justified

Rationale: Deputy 1 said the complainant was never under arrest. He detained the complainant in his patrol vehicle after she refused to sign a citation. The complainant who was cited for VC§ 23123, Use of Cell Phone, said she contacted Kaiser Hospital (calls made to medical professionals are an exception to this law) and used the speaker component of her phone but denied that it ever touched her ear and/or face. Deputy 1 stated he observed the complainant with the cell phone to her ear while moving in traffic. The complainant did not provide her cell phone and/or phone records to document the specific type of device utilized and/or the call made at the time in question. There is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 1 took the complainant into custody for not signing a traffic citation without explaining the process.

Board Finding: Not Sustained

Rationale: Deputy 1 said the complainant was never under arrest and only detained in his patrol vehicle after she refused to sign a citation for VC§ 23123, Use of Cell Phone. Refusal to sign a citation is a violation of VC§ 40302, Mandatory Appearance. Deputy 1 is legally justified to arrest a violator for refusal to sign a citation. However, there is dispute by both parties over the explanations given regarding this process and insufficient evidence to either prove or disprove the explanation of process.

3. Excessive Force – Deputy 1 “snatched” the complainant from her vehicle, twisted her arms behind her back, and pushed her head up against the top of her car.

Board Finding: Not Sustained

Rationale: Again, there is dispute over the actions that occurred by both parties and no further witnesses and/or evidence that has been brought forth to support either side. Due to insufficient evidence, we were unable to prove or disprove this allegation.

4. Misconduct/Discourtesy – Deputy 1 said to the complainant, “Yeah, you want some drama, I got some (fucking) drama for you. We’ll see how you like going to jail, since you want some (fucking) drama.”

Board Finding: Sustained

Rationale: Profanity is a violation of Sheriff’s Policy & Procedure 2.22, Courtesy. Deputy 1 denied making these statements. Without further evidence, we are unable to prove or disprove this allegation.

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### **10-005**

1. False Arrest – Deputies 1 and/or 2 detained a minor when he requested assistance after becoming lost and/or stranded.

Board Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Excessive Force – Deputies 1 and/or 2 handcuffed and beat a minor resulting in head injuries.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure - Deputies 1 and 2 ripped off and shredded a minor's clothing.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure - Deputies 1, 2, and/or other unidentified officers refused to contact a minor's parents per his request.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 3 refused to contact a minor's parents per his request.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure – The Sheriff's Department will not provide the aggrieved with basic information concerning this incident.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **10-006**

1. Misconduct/Intimidation - Deputy 1 threatened to cite the complainant for littering, without cause.

Board Finding: Not Sustained

Rationale: Deputy 1 contacted the complainant related to the law of littering cigarettes on the ground. (VC 23111) A witness to this incident who was within earshot of their conversation, only heard Deputy 1 explain the infraction of which the complainant was possibly guilty. There is insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Intimidation - Deputy 1 threatened to arrest the complaint for being drunk in public, without cause.

Board Finding: Not Sustained.

Rationale: Deputy 1 and the complainant offered conflicting information about the drunk in public statement. The complainant was not cited or arrested and returned to the venue. There is insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Intimidation - Deputy 1 said of the complainant, "I'm going to get that motherfucker."

Board Finding: Not Sustained

Rationale: Deputy 1 denies making this statement or that he would say that to any member of the public. There

are conflicting accounts as to whether or not Deputy 1 made this statement. There is insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy - Deputy 1 called the complainant a “cocky fucker.”

Board Finding: Not Sustained

Rationale: Deputy 1 denies making this statement, and available witnesses on the scene deny hearing Deputy 1 make this statement. Witnesses for the complainant have been unavailable, leaving the complainant without any corroborating testimony. There is insufficient evidence to prove or disprove this allegation.

5. Misconduct/Discourtesy - Deputy 1 told the complainant to “take his fucking ass away from him.”

Board Finding: Not Sustained

Rationale: Deputy 1 denies making this statement, and available witnesses on the scene deny hearing Deputy 1 make this statement. Witnesses for the complainant have been unavailable, leaving the complainant without any corroborating testimony. There is insufficient evidence to prove or disprove this allegation.

6. Misconduct/Procedure - Deputy 1 refused to give his name and identification number when asked.

Board Finding: Not Sustained

Rationale: Deputy 1 and a witness deputy deny that Deputy 1 refused to give his name and badge number to the complainant. There is insufficient evidence to prove or disprove this allegation

7. Misconduct/Discourtesy - Deputy 1 stated, “I don’t have to give you shit; get the fuck out of here before I take you in.”

Board Finding: Not Sustained

Rationale: Deputy 1 denies making this statement. There are no independent witnesses to corroborate Deputy 1 or the complainant’s statements therefore, there is insufficient evidence to prove or disprove this allegation.

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## **11-005**

1. On January 12, 2011, CLERB received a signed complaint alleging unidentified police officers to include San Diego Police, San Diego State University Police and Mesa College Police Departments are “cell phone tracking.”

Board Finding: Summary Dismissal

Rationale: CLERB does not have authority to investigate this complaint based upon the following Rules & Regulations: Section 4: Authority, Jurisdiction, Duties and Responsibilities of Review Board. The Review Board lacks jurisdiction.